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UNITED STATES DISTRICT COURT
FOR DISTRICT OF NORTHERN CALIFORNIA

VLADIMIR A. BALAREZO, ET AL.,
individually and on behalf of others similarly
situated

Plaintiff,

vs.

NTH CONNECT TELECOM INC., AND
STEVEN CHEN,

Defendants

Case No.:C07-05243 JF

**DECLARATION OF OSMIN AVILA IN
SUPPORT OF PLAINTIFFS' MOTION
FOR APPROVAL OF *HOFFMANN-LA
ROCHE* NOTICE**

Date: April 11, 2008

Time: 9:00 AM

Judge: Jeremy Fogel

I, the undersigned, declare as follows:

1. I am over 18 years old. I have personal knowledge of the matters stated herein. If called upon to testify before this Court, I would and could do so to the same effect.

2. I was employed by Defendant Nth Connect Telecom Inc. ("Nth Connect") as an Installation Technician approximately from 2005 to 2007.

3. My duties as an Installation Technician at the Nth Connect were to install cable equipments for Comcast at the customers' houses as dispatched at various specified time periods during the day.

1 4. I was compensated by piece for the work I performed. Specifically, I was
2 compensated a specific rate for each installation I had completed. The piece rate would vary,
3 depending on the nature of the particular job I was dispatched to perform. At the end of each pay
4 period, Nth Connect would give me an earnings statement that summarized all the work I
5 performed during the pay period, and the amount I earned for that pay period. Exhibit 1 hereto is
6 a true and accurate copy of one earning statement issued to me for the period from December 24,
7 2006 to January 6, 2007. As demonstrated by Exhibit 1, the amount I earned bore no relation to
8 the hours I worked during the pay period.

9 5. I was never paid according to an agreed-upon hourly rate.

10 6. My pay was never based on the number of hours I worked.

11 7. For the early part of my employment with Nth Connect, I was treated as an
12 “independent contractor,” and was paid on 1099 not subject to tax withholdings. Sometime in
13 2006, Nth Connect started putting me and other Installation Technicians on payroll. In
14 processing the payroll, Nth Connect would arbitrarily assign me an artificial hourly rate at or
15 near the minimum wage, and reverse engineer the payroll calculation using the number of hours
16 shown on my daily time cards. As result, my payroll statement would show that I was paid an
17 hourly rate near the minimum wage for regular hours worked within 8 hours per day or 40 hours
18 per week, and time and one-half of that falsified hourly rate for hours worked in excess of 8
19 hours per day or 40 hours per week. Such reverse-engineered hourly earnings for a particular
20 pay period would inevitably differ from the amount I actually earned based on the installation
21 work I performed during that pay period. Nth Connect would then list an extra amount as
22 “bonus”, “gas reimbursements”, “expenses” and “tools”, etc. to make up the difference so that
23 the gross amount I received from Nth Connect per pay period as reflected on the payroll
24 statement for that period would always confirm with the amount I earned based on the
25 installation work performed, while in reality, I was not paid any amount in addition to the
earnings from installations based on piece rate. Exhibit 2 hereto is a true and correct copy of

1 payroll statement for the period from December 24, 2007 to January 6, 2007, which was reverse-
2 engineered to make it appear that I was paid by an hourly rate for regular hours and one and one-
3 half of that hourly rate for overtime hours worked.

4 8. Based on my personal knowledge of Nth Connect's operations that I gained
5 during my employment with Nth Connect, I know that none of the Techs received overtime pay
6 premiums. I often spoke with other Techs during my tenure about our terms and conditions of
7 employment. From my own experience, what I learned from my managers, I learned that Nth
8 Connect observed a uniform policy applicable to all Techs of paying only piece rate earnings
9 from the installations performed despite that Techs worked substantial overtime hours every
10 week.

11 I declare under penalties of perjury under the laws of the United States that the foregoing
12 is true and accurate.

13 Dated: March 6, 2008

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15 By: /s/ Osmin Avila
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